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remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Kentucky responded with a letter dated May 11, 1988, stating in part:

This is in response to your letter dated May 3, 1988 * * *. As requested by your letter, the Kentucky Division for Air Quality agrees to include the condition set forth in your letter, in all potentially affected permits issued under regulation 401 KAR 51:017 or 401 KAR 51:052. Therefore, we request that you consider this letter as our commitment that the required caveat will be included in all potentially affected permits * * *.

(d) All applications and other information required pursuant to § 52.21 of this part from sources located in the Commonwealth of Kentucky shall be submitted to the State agency, Commonwealth of Kentucky, Energy and Environment Cabinet, Department of Environmental Protection, Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky 40610-1403 or local agency, Louisville Metro Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky 40204, rather than to EPA's Region 4 office.

[54 FR 36311, Sept. 1, 1989, as amended at 74 FR 55143, Oct. 27, 2009]

§ 52.932 Rules and regulations.

(a) The last sentence of section 3(1) of Kentucky regulation 401 KAR 3:050, which specifies that a new fossil fuel fired steam electric generator's allowable SO₂ emissions may be calculated by averaging SO₂ emissions from existing units of this type and from new ones, is disapproved since it contravenes subpart D of 40 CFR part 60, New Source Performance Standards.

(b) Section 8(2)(a) of regulation 401 KAR 61:015 is disapproved in that it allows the Tennessee Valley Authority's Shawnee power plant until October 1, 1981, to achieve compliance with emissions limits which are not made more stringent by the 1979 Part D revisions, and which the source was previously required to meet by July 1, 1977.

(c) Section 8(2)(d) of regulation 401 KAR 61:015 is disapproved in that it al-

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lows sources until December 31, 1982, to achieve compliance with emission limits which are not made more stringent by the 1979 Part D revisions, and which the sources were previously required to meet prior to 1979.

[41 FR 19106, May 10, 1976, as amended at 46 FR 40188, Aug. 7, 1981]

§ 52.933 Control Strategy: Sulfur oxides and particulate matter.

(a) In a letter dated March 27, 1987, the Kentucky Department for Natural Resources and Environmental Protection certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Big Rivers-Green #1 & 2, Kentucky Utilities-Ghent #3 & 4, and Ashland Oil, Inc.-Catlettsburg.

(b) *Determination of Attainment.* EPA has determined, as of March 9, 2011, that the Louisville, IN-KY PM_{2.5} non-attainment area has attained the 1997 PM_{2.5} NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 PM_{2.5} NAAQS.

(c) *Disapproval.* EPA is disapproving portions of Kentucky's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

(d) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007-2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, non-attainment Area has attained the 1997 annual PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual PM_{2.5} NAAQS.

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(e) *Determination of Attainment.* EPA has determined, as of September 29, 2011, that based upon 2007–2009 air quality data, the Cincinnati-Hamilton, Ohio-Kentucky-Indiana nonattainment Area has attained the 1997 annual PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual PM_{2.5} NAAQS.

[54 FR 23478, June 1, 1989, as amended at 76 FR 12862, Mar. 9, 2011; 76 FR 43143, July 20, 2011; 76 FR 55543, Sept. 7, 2011; 76 FR 60376, Sept. 29, 2011]

§ 52.934 VOC rule deficiency correction.

(a) Sections 1.02, 1.08, 6.12, 6.13, 6.16, 6.18, 6.19, 6.23, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.35, 7.11, 7.12, 7.16, 7.18, 7.19, 7.23, 7.52, 7.56, 7.57, 7.58, 7.59, 7.60 and 7.61 of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The Commonwealth submitted these regulations to EPA for approval on February 12, 1992. These sections were intended to correct deficiencies cited in a letter calling for the Commonwealth to revise its SIP for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988, and clarified in a letter from Winston A. Smith, Air, Pesticides & Toxics Management Division Director, to William C. Eddins, Director of the Commonwealth of Kentucky Division for Air Quality.

(b) Sections 1.05, 1.06, 6.17, 6.36, 6.37, and 6.40 of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The Commonwealth submitted these regulations to EPA for approval on March 4, 1993. These sections were intended to correct deficiencies cited in a letter calling for the Commonwealth to revise its SIP for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988, and clarified in a letter from Winston A. Smith, Air, Pesticides & Toxics

Management Division Director, to William C. Eddins, Director of the Commonwealth of Kentucky Division for Air Quality.

(c) Deficiencies in 1.12 Emissions Trading, however, have not been corrected. The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guideline relating to the deficiencies before the SIP for ozone can be fully approved.

[59 FR 32352, June 23, 1994]

§ 52.935 PM₁₀ State implementation plan development in group II areas.

On July 7, 1988, the State submitted a committal SIP for the cities of Ashland and Catlettsburg in Boyd County. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation of the SIP requirements for PM₁₀ at 52 FR 24681. The SIP commits the State to submit an emissions inventory, continue to monitor for PM₁₀, report data and to submit a full SIP if a violation of the PM₁₀ National Ambient Air Quality Standards is detected.

[55 FR 4172, Feb. 7, 1990]

§ 52.936 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308 for protection of visibility in mandatory Class I federal areas.

(b) [Reserved]

[77 FR 19109, Mar. 30, 2012]

EFFECTIVE DATE NOTE: At 77 FR 33657, June 7, 2012, § 52.936 was revised, effective August 6, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 52.936 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Kentucky on June 25, 2008, and amended on May 28, 2010, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_x and SO₂ from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.